

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT, STATE OF NEW YORK  
-----X  
GEORGE JOSEPH SALLAI,

VERIFIED ANSWER

Plaintiff,

-against-

CIVIL ACTION NO.  
07 CV 10346

THE CITY OF NEW YORK,  
THE NEW YORK CITY POLICE DEPARTMENT,  
JANE AND JOHN DOE POLICE OFFICERS,  
DUANE READE INC.,

JUDGE RAKOFF

DEFENDANT, DUANE  
READE INC. DEMANDS  
TRIAL BY JURY

Defendants.  
-----X

Defendant, DUANE READE, INC., by its attorneys, CHESNEY &  
MURPHY, LLP, answers the Complaint of the plaintiff upon  
information and belief as follows:

1. Denies knowledge or information sufficient to form a  
belief as to each and every allegation contained in the paragraphs  
of the Complaint designated as "1", "2", "3", "4", "5" and "6" and  
refer all questions of law and fact to this Honorable Court.

2. Denies each and every allegation contained in the  
paragraph of the Complaint designated as "8" and refer all  
questions of law and fact to this Honorable Court.

**AS TO THE FIRST CAUSE OF ACTION FOR ASSAULT AND BATTERY AND THE  
EXCESSIVE USE OF FORCE BY THE NEW YORK CITY POLICE DEPARTMENT.**

3. Repeats and reiterates each and every denial contained in  
the paragraphs of this Answer and numbered "1" and "2" to each and  
every allegation contained in the paragraph of the Complaint  
designated as "9".

4. Denies each and every allegation contained in the  
paragraphs of the Complaint designated as "10", "15" and "16" and

refers all questions of law and fact to this Honorable Court.

5. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as "11", "12" and "13".

6. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as "14" and "17" and refers all questions of law and fact to this Honorable Court.

**AS TO THE SECOND CAUSE OF ACTION FOR NEGLIGENCE, AND  
NEGLIGENT HIRING, AND NEGLIGENT SUPERVISION.**

7. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered "1", "2", "3", "4", "5" and "6" to each and every allegation contained in the paragraph of the Complaint designated as "18".

8. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as "19" and "20" and refers all questions of law and fact to this Honorable Court.

**AS TO THE THIRD CAUSE OF ACTION FALSE ARREST.**

9. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered "1", "2", "3", "4", "5", "6", "7" and "8" to each and every allegation contained in the paragraph of the Complaint designated as "21".

10. Denies each and every allegation contained in the paragraph of the Complaint designated as "22".

11. Denies knowledge or information sufficient to form a

belief as to each and every allegation contained in the paragraph of the Complaint designated as "23" and refers all questions of law and fact to this Honorable Court.

**AS TO THE FOURTH CAUSE OF ACTION FALSE IMPRISONMENT.**

12. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered "1", "2", "3", "4", "5", "6", "7", "8", "9", "10" and "11" to each and every allegation contained in the paragraph of the Complaint designated as "24".

13. Denies each and every allegation contained in the paragraph of the Complaint designated as "25" and refers all questions of law and fact to this Honorable Court.

14. Denies each and every allegation contained in the paragraph of the Complaint designated as "26".

**AS TO THE FIFTH CAUSE OF ACTION MALICIOUS PROSECUTION.**

15. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13" and "14" to each and every allegation contained in the paragraph of the Complaint designated as "27".

16. Denies each and every allegation contained in the paragraph of the Complaint designated as "28" and refers all questions of law and fact to this Honorable Court.

17. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Complaint designated as "29" and refers all questions of law

and fact to this Honorable Court.

**AS TO THE SIXTH CAUSE OF ACTION THE INTENTIONAL  
INFLICTION OF EMOTIONAL DISTRESS.**

18. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16" and "17" to each and every allegation contained in the paragraph of the Complaint designated as "30".

19. Denies each and every allegation contained in the paragraph of the Complaint designated as "31".

20. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Complaint designated as "32" and refers all questions of law and fact to this Honorable Court.

**AS TO THE SEVENTH CAUSE OF ACTION NEGLIGENT  
INFLICTION OF EMOTIONAL DISTRESS.**

21. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19" and "20" to each and every allegation contained in the paragraph of the Complaint designated as "33".

22. Denies each and every allegation contained in the paragraph of the Complaint designated as "34".

23. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Complaint designated as "35" and refers all questions of law

and fact to this Honorable Court.

**AS TO THE EIGHTH CAUSE OF ACTION THE DEPRIVATION OF  
CONSTITUTIONAL RIGHTS AND AN UNJUST LIBERTY RESTRAINT.**

23. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21" and "22" to each and every allegation contained in the paragraph of the Complaint designated as "36".

24. Denies each and every allegation contained in the paragraph of the Complaint designated as "37" and refers all questions of law and fact to this Honorable Court.

**AS TO THE NINTH CAUSE OF ACTION PECUNIARY DAMAGES AND LOST WAGES.**

25. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23" and "24" to each and every allegation contained in the paragraph of the Complaint designated as "38".

26. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Complaint designated as "39".

27. Denies each and every allegation contained in the paragraphs of the Complaint designated as "40" and "41".

**AS TO THE FIRST CAUSE OF ACTION AGAINST DUANE READE MORE  
SPECIFICALLY AND NOW AMPLIFIED:  
FOR FEAR OF ASSAULT AND ATTEMPTED BATTERY.**

28. Repeats and reiterates each and every denial contained in

the paragraphs of this Answer and numbered "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26" and "27" to each and every allegation contained in the paragraph of the Complaint designated as "42".

29. Denies each and every allegation contained in the paragraphs of the Complaint designated as "43" and "44" and refers all questions of law and fact to this Honorable Court.

**AS TO THE SECOND CAUSE OF ACTION AGAINST DUANE READE**  
**MORE SPECIFICALLY AND NOW AMPLIFIED:**  
**FOR NEGLIGENT HIRING AND NEGLIGENT SUPERVISION.**

30. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28" and "29" to each and every allegation contained in the paragraph of the Complaint designated as "45".

31. Denies each and every allegation contained in the paragraph of the Complaint designated as "46" and refers all questions of law and fact to this Honorable Court.

**AS TO THE THIRD CAUSE OF ACTION AGAINST DUANE READE**  
**MORE SPECIFICALLY AND NOW AMPLIFIED:**  
**FOR MALICIOUS PROSECUTION.**

32. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28",

"29", "30" and "31" to each and every allegation contained in the paragraph of the Complaint designated as "47".

33. Denies each and every allegation contained in the paragraphs of the Complaint designated as "48" and "49" and refers all questions of law and fact to this Honorable Court.

**AS TO THE FOURTH CAUSE OF ACTION AGAINST DUANE READE  
MORE SPECIFICALLY AND MORE AMPLIFIED:  
FOR NEGLIGENCE AND RECKLESSNESS.**

34. Denies each and every allegation contained in the paragraph of the Complaint designated as "50".

35. Denies each and every allegation contained in the paragraph of the Complaint designated as "51" and refers all questions of law and fact to this Honorable Court.

**AS TO JURY**

36. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Complaint designated as "52".

**AS AND FOR A FIRST, SEPARATE, DISTINCT  
AND COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

That in the event the plaintiff recovers any judgment against this defendant, then this defendant demands that any such judgment be diminished in accordance with Article 16 of the CPLR and more particularly, Section 1601 thereof; and also if there is any such judgment that it be limited to this answering defendant's equitable share of any total liability.

**AS AND FOR A SECOND, SEPARATE, DISTINCT  
AND COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

That any damages awarded to plaintiff must be reduced by the amount of any collateral source including, but not limited to, insurance, social security, workers' compensation or employee benefit programs, that the Court finds was, or will be with reasonable certainty, replaced or indemnified.

**AS AND FOR A THIRD, SEPARATE, DISTINCT  
AND COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

That the accident or occurrence referred to in the plaintiff's Complaint and the injuries claimed were caused in whole or in part by the carelessness, contributory negligence or the assumption of risk of the plaintiff and this answering defendant demands that the plaintiff's damages be accordingly diminished or denied.

**AS AND FOR A FOURTH, SEPARATE, DISTINCT  
AND COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

That the negligence, fault and culpable conduct of others herein caused the incident in which the plaintiff was allegedly injured and/or caused injuries, if any, resulting therefrom.

**AS AND FOR A FIFTH, SEPARATE, DISTINCT  
AND COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

It is alleged that the claim for defamation is barred because the statements are true or substantially true and/or when the statements were made they were believed to be true and/or were not recklessly made and/or the statements are not of the kind under the



circumstances that are defamatory and/or the statements were not published and/or the statements were not a substantial factor in the plaintiff suffering a financial loss.

**AS AND FOR A SIXTH, SEPARATE, DISTINCT  
AND COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

That, upon information and belief, if the answering defendant, in fact, detained the plaintiff as alleged in the complaint, that the defendant detained the plaintiff under "reasonable grounds" and that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning. With respect to any cause of action set forth in plaintiff's complaint based upon a claim of false arrest, false imprisonment, unlawful detention, defamation, assault, trespass, or invasion of civil rights, defendant, **DUANE READE, INC.**, pleads each and every defense as applicable, as set forth in the General Business Law of the State of New York, and in particular, Section 218.

**AS AND FOR A SEVENTH, SEPARATE, DISTINCT  
AND COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

That if at the time and place alleged in the plaintiff's Complaint, there was any assault on the plaintiff by the answering defendant's agents, servants and/or employees, and if it should be determined at the time of trial that such assault was performed against the will of the plaintiff, then such assault was justified and/or provoked by the acts and conduct of the plaintiff and/or by

the circumstances then and there prevailing.

**AS AND FOR AN EIGHTH, SEPARATE, DISTINCT  
AND COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

That if a jury should find that any of the incidents complained of by the plaintiff did occur, then it is the defendant's position that they were strictly caused by the provocation of the plaintiff and not by any act of the defendant.

**AS AND FOR A NINTH, SEPARATE, DISTINCT  
AND COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

The plaintiff has failed to properly state a claim for punitive damages.

**AS AND FOR A TENTH, SEPARATE, DISTINCT  
AND COMPLETE AFFIRMATIVE DEFENSE,  
THE ANSWERING DEFENDANT ALLEGES:**

That the applicable Statutes of Limitations pertaining to these types of claims and/or actions have expired. Therefore, this suit is barred as a matter of law as to the plaintiff.

**AS AND FOR A CROSS-CLAIM AGAINST THE  
CO-DEFENDANT, THE CITY OF NEW YORK,  
THE NEW YORK CITY POLICE DEPARTMENT,  
JANE DOE AND JOHN DOE POLICE OFFICERS,  
THE ANSWERING DEFENDANT ALLEGES:**

That if the plaintiff sustained the injuries and damages in the manner and at the time and place set forth in the Complaint, then said damages were sustained in whole or in part by reason of the negligence and/or breach of warranty and/or contract and/or by failing to procure contracted for insurance by the aforesaid co-defendant, and the answering defendant is entitled to contribution,

apportionment and indemnification from and against the said co-defendant for all or part of any verdict or judgment that plaintiff may recover against the answering defendant, including costs for defending plaintiff's action.

**WHEREFORE,** this answering defendant demands judgment dismissing the Complaint of the plaintiff herein together with the costs and disbursements of this action.

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RUDOLPH P. PETRUZZI (2434)  
CHESNEY & MURPHY, LLP  
Attorneys for Defendant  
DUANE READE, INC.  
Office & P.O. Address  
2305 Grand Avenue  
Baldwin, New York 11510  
(516) 378-1700

TO: MANUEL MOSES, ESQ.  
Attorney for Plaintiff  
Office & P.O. Address  
236 West 26<sup>th</sup> Street  
Suite 303  
New York City, New York 10001  
(212) 736-2624 - Ext. 11

MICHAEL A. CARDOZO, ESQ.  
Corporation Counsel  
Attorneys for Defendants  
CITY OF NEW YORK, THE NEW YORK  
CITY POLICE DEPARMTENT, JANE  
AND JOHN DOE POLICE OFFICERS  
Office & P.O. Address  
100 Church Street  
New York, New York, 10007  
(212) 788-9567

